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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,887	12/31/2001	Justin F. Beckett	1298-001	4370
23485	7590	09/05/2003		
JINAN GLASGOW			EXAMINER	
P O BOX 28539			CAPRON, AARON J	
RALEIGH, NC 276118539				
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/035,887	BECKETT, JUSTIN F.
Examiner	Art Unit	
Aaron J. Capron	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 25 February 2002.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of copending Application No. 09/818,809. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to claim the method or device/apparatus broader in order to obtain the most commercially viable form of invention or in order to obtain the broadest protection for invention for securing commercial viability. Essentially, the omitted language pertaining to the 'music game' being a trivia game limited the invention and thus by omitting the language, a broader form of invention is claimed which secures broader protection for commercial viability.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5-7, 9, 11-19, 21-31, 34 and 37-38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Walker et al. (U.S. Patent No. 5,734,413; hereafter “Walker”).

Walker discloses a method of doing business using an on-line knowledge and skill based gaming wherein a multiplicity of users play simultaneously and where revenue is generated based on the number of players who visit the website where the game is hosted and played.

Claims 1-4, 10-29, 32-34 and 37 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Miles et al. (U.S. Patent No. 6,102,406; hereafter “Miles”).

Miles discloses a method of doing business using an on-line knowledge and skill based gaming wherein a multiplicity of users play simultaneously and where revenue is generated based on the number of players who visit the website where the game is hosted and played.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker.

Referring to claim 8, Walker discloses a trivia game wherein the categories include sports, movies, etc (10:42-59), but does not specifically disclose that the trivia game is music-related. However, it is notoriously well known in the art of trivia games that music related questions and answers are asked to the players. One would be motivated to combine music related questions into a trivia game in order to make the game more interesting and challenging. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate music-related questions into the trivia game of Walker in order to make the game more interesting and challenging.

Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of You Don't Know Jack.

Walker discloses a trivia game, but does not disclose the trivia game having audio or visual clips. However, You Don' Know Jack discloses a trivia game that includes audio and visual clips in order to keep the players entertained throughout the game (page 1, 3<sup>rd</sup> paragraph, lines 1-2 and page 1, 6<sup>th</sup> paragraph, lines1-5). One would be motivated to combine the references in order to keep the player entertained through various question sequences. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the sound bytes and visual clips of You Don't Know Jack into the trivia game of Walker in order to keep the player entertained and willing to play more.

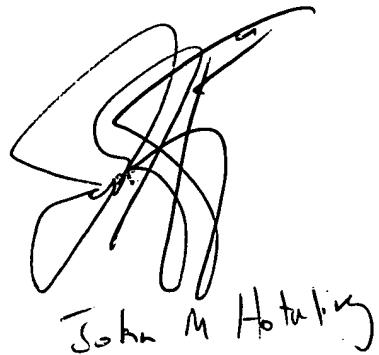
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ajc



A handwritten signature in black ink, appearing to read "John M. Hoteling". The signature is fluid and cursive, with the name written in a larger, more formal style at the end.